

Senate Bill No. 921

CHAPTER 731

An act to add Sections 55, 56, and 57 to the Military and Veterans Code, relating to the Military Department, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2012. Filed with
Secretary of State September 28, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 921, Lieu. Military Department: Office of the Inspector General: California Military Whistleblower Protection Act.

Existing law establishes in state government the Military Department, which includes the office of the Adjutant General, the State Military Reserve, the California Cadet Corps, and the Naval Militia. There is also, within the Military Department, the inspector general, an office that inspects, audits, investigates, trains, and performs various duties necessary to support the mission of the Military Department.

This bill would establish specified requirements for the position of California's inspector general, including, among others, a requirement that the Governor appoint the inspector general. This bill would specify the duties of the California Military Department Inspector General, and would require the inspector general to continue to maintain a toll-free public telephone number and Internet Web site to receive complaints and allegations. This bill would authorize the inspector general to investigate specified complaints and allegations of misconduct upon written request of specified persons, and would provide that those requests are not a public record under the California Public Records Act.

This bill would establish the California Military Whistleblower Protection Act, which would prohibit a person from restricting a member of the Military Department from making specified communications to a Member of Congress, the Governor, a Member of the Legislature, or any state or federal inspector general, or from taking, or threatening to take, unfavorable personnel actions, or withholding, or threatening to withhold, favorable personnel actions, as a reprisal against a member of the Military Department for making specified communications. This bill would require the California Military Department Inspector General to take specified actions if a member of the Military Department makes allegations that a prohibited personnel action has been taken, or has been threatened to be taken, as provided.

This bill would require the Military Department to provide one training per year to the department's civil service employees regarding the role and responsibility of the California Military Department Inspector General and their rights under the California Whistleblower Protection Act, the California

Military Whistleblower Protection Act, and any other relevant state or federal law.

The California Constitution requires that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The Governor is the commander and chief of the state militia.

(b) The Military Department includes the office of the Adjutant General, the California National Guard, the State Military Reserve, the California Cadet Corps, and the Naval Militia.

(c) Within the Military Department, there currently exists an inspector general, who inspects, audits, investigates, trains, and performs various duties necessary to support command functions and the mission of the department.

(d) The California Military Department Inspector General and the California Military Whistleblower Protection Act are intended to mirror federal law and regulations that govern federal inspector generals, specifically the federal Inspector General Act of 1978 and the federal Military Whistleblower Protection Act. Members of the Military Department should be free to communicate and report waste, fraud, abuse of authority, violations of law, or threats to the public health and safety without fear of retribution.

(e) Public servants best serve the citizenry when they can be candid and honest without reservation in conducting the people's business.

SEC. 2. Section 55 is added to the Military and Veterans Code, to read:

55. (a) A person serving in the position of inspector general shall satisfy all of the following requirements:

(1) Be appointed by the Governor, with consideration of the recommendation of the Adjutant General and notification to the Senate Committee on Rules, and shall serve a four-year term from the effective date of appointment. The inspector general may not be removed from office during that term, except for good cause. An inspector general may not serve more than two consecutive terms.

(2) Meet the same qualifications established in this code for the Assistant Adjutant General.

(3) Be subordinate to the Adjutant General and serve on state active duty at the grade of O-6 or higher.

(b) (1) The inspector general may not serve as the Adjutant General or the Assistant Adjutant General for four years from the date of leaving the position of inspector general.

(2) A commissioned officer on state active duty appointed to the position of inspector general who, immediately prior to that duty, held a permanent state active duty position shall remain on state active duty upon vacating the inspector general position.

(c) The department shall, from the amount annually appropriated to it for purposes of this office, continue to fund the position of inspector general.

(d) The inspector general shall have access to all employees and documents of the department.

(e) The inspector general may receive communications from any person, including, but not limited to, any member of the department.

(f) The inspector general shall, at a minimum, continue to perform the functions of inspections, assistance, investigations, and teaching and training. The functions of the inspector general shall be performed in accordance with applicable service laws, rules, and regulations governing federal inspectors general.

(g) The inspector general shall continue to maintain a toll-free public telephone number and an Internet Web site to receive complaints and allegations, including, but not limited to, those described in subdivision (h) or the California Military Whistleblower Protection Act. The inspector general shall continue to post the telephone number and Internet Web site in clear view at every California National Guard armory, flight facility, airfield, or installation.

(h) (1) At the discretion of the inspector general or the Adjutant General, or upon a written request by the Governor, a Member of the Legislature, any member of the department, or any member of the public, the inspector general may investigate any complaint or allegation regarding the following:

(A) A violation of law, including, but not limited to, regulations, the Uniform Code of Military Justice, and any law prohibiting sexual harassment or unlawful discrimination.

(B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specified danger to the public health or safety.

(2) (A) For all written requests submitted by a Member of the Legislature, the inspector general shall respond in writing with his or her findings. The response shall contain only that information that may be lawfully disclosed, and, if a complaint or allegation is at issue, the response shall contain, at a minimum, information regarding whether the complaint or allegation was unfounded or sustained.

(B) If the inspector general conducts an investigation at the request of a Member of the Legislature, the inspector general shall submit to that member a report of his or her findings of that investigation. The report shall contain only information that may be lawfully disclosed, and shall contain, at a minimum, information regarding whether the complaint or allegations were unfounded or sustained.

(3) (A) A request described in paragraph (1) is not a public record and is not subject to disclosure under the California Public Records Act set forth in Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(B) The inspector general shall not disclose to any person or entity the identity of a person making a written request or an allegation or complaint described in paragraph (1), unless the person making the request, allegation, or complaint has consented to the disclosure in writing.

(4) (A) When deemed appropriate by the inspector general, the inspector general may refer to the Chief of the National Guard Bureau any complaints or allegations described in paragraph (1), any violations of the Uniform Code of Military Justice, or any violations of any other state or federal law.

(B) When deemed appropriate by the inspector general, the inspector general may refer to the State Auditor any complaints or allegations described in subparagraph (B) of paragraph (1) or any violation of state or federal law.

(i) If the inspector general receives, or becomes aware of, an allegation, complaint, or misconduct regarding the Adjutant General or the Assistant Adjutant General, the inspector general shall immediately refer the matter to the Chief of the National Guard Bureau and the Governor for review. The inspector general, by order of the Governor, shall conduct an investigation regarding the allegations concerning the Adjutant General or the Assistant Adjutant General concurrently with any federal investigation where appropriate. The inspector general shall report the findings to the Governor under this subdivision.

(j) (1) (A) The inspector general shall, on or before July 1, 2013, and on or before July 1 each year thereafter, submit a report to the Governor, the Legislature, the Senate Committee on Veterans Affairs, and the Assembly Committee on Veterans Affairs. The report shall include, but not be limited to, a description of significant problems discovered by the office and a summary of investigations conducted by the office during the previous year. Upon submitting the report to the Governor, the Legislature, the Senate Committee on Veterans Affairs, and the Assembly Committee on Veterans Affairs the report shall be made available to the public and posted on the office's Internet Web site.

(B) A report to be submitted pursuant to subparagraph (A) shall be submitted in compliance with Section 9795 of the Government Code.

(2) Upon the completion of an investigation conducted by the inspector general pursuant to paragraph (1) of subdivision (h) or Section 56, he or she shall also prepare and issue on a quarterly basis a public report that includes all investigations completed in the previous quarter. The inspector general shall submit a copy of the quarterly report to the Legislature, the Senate Committee on Veterans Affairs, and the Assembly Committee on Veterans Affairs. The inspector general shall have the discretion to redact or otherwise protect the names of individuals, specific locations, or other facts that, if not redacted, might hinder prosecution under state or federal law or the Uniform Code of Military Justice related to the investigation, or

where disclosure of the information is otherwise prohibited by law, and to decline to produce any of the underlying materials. In a case where allegations were deemed to be unfounded, all applicable identifying information shall be redacted. Each quarterly report shall be made available to the public and posted on the office's Internet Web site.

(k) For purposes of this section, all of the following shall apply:

(1) "Department" means the Military Department.

(2) "Inspector general" means the California Military Department Inspector General.

(3) "Member of the department" means the Adjutant General, any person under the command of the Adjutant General, any person employed by the department, including, but not limited to, any service member or employee of the office of the Adjutant General, the California National Guard, the State Military Reserve, the California Cadet Corps, or the Naval Militia, any person on state active duty, any person with a state commission, or any civil service or part-time employee of the department.

(4) "Office" means the Office of the California Military Department Inspector General.

SEC. 3. Section 56 is added to the Military and Veterans Code, to read:

56. (a) This section shall be known, and may be cited, as the "California Military Whistleblower Protection Act."

(b) Notwithstanding any other law, a person shall not do any of the following:

(1) (A) Restrict a member of the department from communicating with a Member of Congress, the Governor, a Member of the Legislature, or any state or federal inspector general.

(B) Subparagraph (A) shall not apply to a communication that is unlawful.

(2) Take, or threaten to take, an unfavorable personnel action, or withhold, or threaten to withhold, a favorable personnel action, as a reprisal against a member of the department for making a communication to any person, including, but not limited to, any of the following:

(A) A Member of Congress.

(B) The Governor.

(C) A Member of the Legislature.

(D) The inspector general.

(E) The State Auditor.

(F) A federal inspector general or any other inspector general appointed under the Inspector General Act of 1978.

(G) Any member of a Department of Defense audit, inspection, investigation, or law enforcement organization.

(H) Any local, state, or federal law enforcement agency.

(I) Any person or organization in the chain of command of the department.

(J) Any other person or organization designated pursuant to regulation or any other established administrative procedures for such communications.

(c) Notwithstanding any other law, if a member of the department submits to an inspector general an allegation that a personnel action prohibited by

paragraph (2) of subdivision (b) has been taken or has been threatened to be taken against the member of the department, the inspector general shall take action as provided by subdivision (d).

(d) An inspector general receiving an allegation pursuant to subdivision (c) shall do all of the following:

(1) Expeditiously determine whether there is sufficient evidence, in accordance with federal regulations governing federal inspectors general, to warrant an investigation of the allegation.

(2) Conduct a separate investigation of the information that the member making the allegation believes constitutes evidence of wrongdoing under both of the following circumstances:

(A) There has not been a previous investigation.

(B) There has been a previous investigation but the inspector general determines that the previous investigation was biased or otherwise inadequate.

(3) Upon determining that an investigation of an allegation is warranted, expeditiously investigate the allegation.

(e) If the inspector general is not outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken a personnel action prohibited by paragraph (2) of subdivision (b), the inspector general shall refer the allegation to the Chief of the National Guard Bureau and the Governor.

(f) (1) After completion of an investigation the inspector general shall submit a report on the results of the investigation to the Adjutant General and a copy of the report on the results of the investigation to the member of the department who made the allegation. The report shall be transmitted to the Adjutant General, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation.

(2) The report on the results of the investigation transmitted to the Adjutant General shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint.

(3) Except for that information that is not required to be disclosed under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, in the copy of the report transmitted to the member of the department the inspector general shall ensure the maximum disclosure of information that may be lawfully disclosed. The copy of the report need not, however, include summaries of interviews conducted, or any document acquired, during the course of the investigation. These items shall be transmitted to the member of the department, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.

(4) If, in the course of an investigation of an allegation under this section, the inspector general determines that it is not possible to submit the report required by this subdivision within 180 days after the date of receipt of the allegation being investigated, the inspector general shall provide to the Adjutant General and to the member making the allegation a notice of all of the following:

(A) The reasons why the report may not be submitted within that time.

(B) When the report will be submitted.

(g) Nothing in this article is intended to supersede the rights, benefits, processes, and procedures already afforded to members of the department under existing law.

(h) For purposes of this section, all of the following shall apply:

(1) A “communication” means any communication or report in which a member of the department complains of, or discloses information that the member of the department reasonably believes constitutes evidence of, any of the following:

(A) A violation of law, including, but not limited to, regulations, the Uniform Code of Military Justice, and any law prohibiting sexual harassment or unlawful discrimination.

(B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specified danger to the public health or safety.

(2) “Department” means the Military Department.

(3) “Inspector general” means the California Military Department Inspector General.

(4) “Member of the department” has the same meaning as defined in Section 55.

(5) “Office” means the Office of the California Military Department Inspector General.

SEC. 4. Section 57 is added to the Military and Veterans Code, to read:

57. The Military Department shall provide, at a minimum, one training per year to the department’s civil service employees regarding the role and responsibility of the California Military Department Inspector General and their rights under the California Military Whistleblower Protection Act, the federal Military Whistleblower Protection Act, and any other relevant state or federal law.

SEC. 5. The Legislature finds and declares that Section 2 of this act, which adds Section 55 to the Military and Veterans Code, imposes a limitation on the public’s right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to protect the confidentiality of those persons making complaints or allegations, as authorized by this act, from any form of retaliation for having made the complaint or allegation, it is in the state’s interest to limit public access to information.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that Military Department personnel who are employed in state active duty, and thus are not under federal military oversight, as well as those subject to the control of these personnel, receive due process in the consideration of complaints and appeals of disciplinary actions, it is necessary for this act to take effect immediately.